

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF VENTURA
VENTURA DIVISION**

TENTATIVE RULINGS

EVENT DATE: 03/12/2020 EVENT TIME: 08:20:00 AM DEPT.: 20
JUDICIAL OFFICER: Matthew P. Guasco

CASE NUM: 56-2018-00511366-CU-PO-VTA
CASE TITLE: NAVA CHAVEZ VS MOUNTAIN VIEW PROPERTIES

CASE CATEGORY: Civil - Unlimited CASE TYPE: PI/PD/WD - Other

EVENT TYPE: Motion for Summary Judgment and/or Adjudication
CAUSAL DOCUMENT/DATE FILED: Motion for Summary Judgment and/or Adjudication, 11/27/2019

Notice Regarding Courtroom 20 Law & Motion Procedures: The law and motion calendar in Courtroom 20 before Judge Matthew P. Guasco starts promptly at 8:30 a.m. Ex parte applications will be heard at the same time as matters on the law and motion calendar. Parties appearing by Court Call must check in with the Judicial Assistant by 8:20 a.m. No notice of intent to appear is required. Parties wishing to submit on the tentative decision must so notify the Court by e-mail at Courtroom20@ventura.courts.ca.gov or by fax to Judge Guasco's secretary, Denise Arreola at (805) 477-5892. **Do not call in lieu of sending an e-mail or fax.** If a party submits on the tentative decision without appearing, but another party appears, the hearing will be conducted in the absence of the non-appearing party. Effective February 13, 2018, all cases assigned to Courtroom 20 are assigned for all purposes (including trial) to Judge Guasco.

The following is the Court's tentative decision concerning the motion of defendant, Westside Building Material Corporation ("Westside"), for summary judgment, or, in the alternative, summary adjudication of claims/issues, as to the Complaint of plaintiffs, Eduardo Nava Chavez ("decendent"), Maria Elena Nava as administrator of the Estate of Eduardo Nava Chavez; the Estate of Eduardo Nava Chavez; Sheila Nava a minor by her GAL Maria Elena Nava; Isabela Nava, a minor by her GAL Maria Elena Nava; and Omero Nava Chavez ("plaintiffs"):

Request for Judicial Notice

The Court GRANTS Westside's unopposed request for judicial notice of declarations which have been filed in this action. (Evid. Code, § 452, subd. (d).)

Evidentiary Objections

The Court SUSTAINS the following objections made by plaintiffs': (1) Ayala declaration: numbers 10-11; (2) Dabbour declaration: numbers 5 (only as to statement, ". . . where he would check the progress of the work and the crew"), 14 (only as to statement, ". . . was clearly visible . . . to Wall Constructors' superintendent"), and 15-17; and (3) Ibarra declaration: number 11.

The Court OVERRULES each and every one of the remaining objections made by plaintiffs, each of which the Court has considered and finds to be without merit.

Undisputed Material Facts ("UMF"s)

For the purposes of ruling on this motion only, the Court makes the following findings:

The Court finds the following UMFs are established by the supporting evidence and undisputed: 9, and 25-29.

The Court finds the following UMFs are established by the supporting evidence, are purportedly disputed, but are

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genuinely undisputed: 1-8, 10-17, 24.

The Court finds the following UMFs are established by the supporting evidence, but are disputed: 18-22.

The Court finds the following UMFs are not established by the supporting evidence: 11 and 23.

Legal Principles Governing Summary Judgment/Adjudication

Summary judgment procedure is well settled: "A party may move for summary judgment in an action or proceeding if it is contended that the action has no merit or that there is no defense to the action or proceeding." (Code of Civ. Proc., § 437c, subd. (a).) A party may also move for "summary adjudication as to one or more causes of action within an action, one or more affirmative defenses, one or more claims for damages, or one or more issues of duty. . . ." (Code of Civ. Proc., § 437c, subd. (f)(1).) "The court must grant the motion if all the papers submitted show that there is no triable issue as to any material fact [citation omitted]-that is, there is no issue requiring a trial as to any fact that is necessary under the pleadings and, ultimately, the law [citations omitted]-and that the moving party is entitled to a judgment as a matter of law [citation omitted]." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 855-56, 107 Cal.Rptr.2d 841, 24 P.3d 493, internal quotation marks omitted ("*Aguilar*").) "The purpose of the law of summary judgment is to provide courts with a mechanism to cut through the parties' pleadings in order to determine whether, despite their allegations, trial is in fact necessary to resolve their dispute." (*Id.*, 25 Cal.4th at p. 855, 107 Cal.Rptr.2d 841, 24 P.3d 493.) The court must construe the evidentiary showing, and all reasonable inferences therefrom, in the light most favorable to the opposing party. (*Id.*, 25 Cal.4th at p. 857, 107 Cal.Rptr.2d 841, 24 P.3d 493.)

The Court follows a three part test in ruling on the motion:

(a) "First, . . . the party moving for summary judgment bears the burden of persuasion that there is no triable issue of material fact and that he is entitled to judgment as a matter of law." (*Id.*, 25 Cal.4th at p. 850, 107 Cal.Rptr.2d 841, 24 P.3d 493.)

(b) "Second, . . . the party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact; if he carries his burden of production, he causes a shift, and the opposing party is then subjected to a burden of production of his own to make a prima facie showing of the existence of a triable issue of material fact."(*Ibid.*)

(c) "Third, . . . how the parties moving for and opposing, summary judgment may each carry their burden of persuasion and/or production depends on which would bear what burden of proof at trial." (*Id.*, 25 Cal.4th at p. 851, 107 Cal.Rptr.2d 841, 24 P.3d 493.)

Ruling on Motion

The Court GRANTS Westside's motion for summary judgment. The Court finds that Westside met its initial burden of production and persuasion that Westside's role in this incident was simply as the drywall supplier who delivered product to the work site at the direction of the general contractor and the drywall subcontractor. Westside lacked any ownership, possession, or control over the worksite or the allegedly dangerous condition (obstruction of guardrail adjacent to elevator shaft). Westside's last delivery of drywall to the worksite was in March, 2017. The accident occurred in April 2017. The undisputed facts establish as a matter of law that Westside did not have a legal duty making it liable in negligence to plaintiffs because its work had been completed and accepted well before, and it had no ownership, possession or control of the worksite on, the date of the accident. (See *Sanchez v. Swinerton & Walberg Co.* (1996) 47 Cal.App.4th 1461, 55 Cal.Rptr.2d 415; *Hogan v. Miller* (1957) 153 Cal.App.2d 107, 314 P.2d 230.) This question of duty is resolved as a matter of law.

The burden shifted to plaintiffs to present a material factual dispute concerning application of the completed work

doctrine on the legal question of duty. Plaintiffs have failed to do so. Westside is entitled to summary judgment as a matter of law. The Court awards costs of suit to Westside in an amount to be determined by the timely service and filing of a cost memorandum in conformity with the Code of Civil Procedure and the California Rules of Court.

Counsel for Westside shall serve and file a notice of ruling and proposed order consistent with the above and in conformity with the Code of Civil Procedure and the California Rules of Court. A copy of this tentative decision (if adopted as the Court's ruling) may be attached to and incorporated by reference in any such notice and proposed order in lieu of copying same verbatim in the body of the document.